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7 BRYANT RIVERA

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 BRYANT RIVERA,

15 Defendant.

Case No. 2:23-MJ-03275-DUTY

**BRYANT RIVERA'S OPPOSITION  
TO REQUEST FOR DETENTION;  
EXHIBIT A**

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18 Bryant Rivera, through counsel of record, Deputy Federal Public Defender,  
19 J. Alejandro Barrientos, submits this opposition to the government's request for  
20 detention, ECF No. 7.

21  
22 Respectfully submitted,

23 CUAUHTEMOC ORTEGA  
24 Federal Public Defender

25 DATED: July 10, 2023

26 By /s/ J. Alejandro Barrientos

27 J. ALEJANDRO BARRIENTOS  
Deputy Federal Public Defender  
28 Attorney for Bryant Rivera

**OPPOSITION TO REQUEST FOR DETENTION****INTRODUCTION**

Bryant Rivera is a 30-year-old American citizen and lifelong resident of the Los Angeles area without any prior arrests, warrants, charges or convictions. He is also a devoted and caring son to his parents, Candido and Maria, who both suffer significant health issues. Both are diabetic. Candido is also blind and largely confined to a wheelchair. Maria has almost no formal education, cannot drive, and cannot read. Neither Candido, nor Maria, can speak English. As explained by his sister in her letter to the Court, Mr. Rivera has been his parents sole caregiver for years. *See Ex. A, Letter from P. Rivera.* They are only able to afford housing because Mr. Rivera financially assists them through his years-long employment as a delivery driver. For these reasons and as further explained below, Mr. Rivera requests that he be granted bail subject to the following conditions: (i) he reside with his sister in Lynwood, California, (ii) his sister shall act as third-party custodian, (iii) location monitoring via ankle monitor, (iv) home incarceration with the exception that, with approval from Pretrial Services, Mr. Rivera may go to his parents' apartment in Downey, California, to perform caretaking responsibilities, (v) affidavits of surety by his father and sister, and (vi) any other condition deemed necessary by the court.

**LEGAL STANDARD**

The Supreme Court has held that courts may grant bail in extradition proceedings when justified by "special circumstances." *Wright v. Henkel*, 190 U.S. 40, 63 (1903). "The term 'special circumstances' has never been precisely defined . . ." *Matter of Extradition of Mainero*, 950 F.Supp. 290, 294 (S.D.Cal.1996). However, the Ninth Circuit has offered examples of such circumstances, including, "the raising of substantial claims upon which the appellant has a high probability of success, a serious deterioration of health while incarcerated, and unusual delay in the appeal process." *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989). Nonetheless, courts are "not bound by an exhaustive list of 'special circumstances.' The determination of what factors

1 to consider and how much weight to give them is within the ‘sound discretion’ of the  
 2 Court. Moreover, a collective approach can lead to a finding of special circumstances.”  
 3 *Wroclawski v. United States*, 634 F. Supp. 2d 1003, 1006 (D. Ariz. 2009) (cleaned up);  
 4 *see also In re Extradition of Gonzalez*, 52 F.Supp.2d 725, 736 (W.D.La.1999) (“The list  
 5 of potential ‘special circumstances’ is not limited to those previously recognized in  
 6 published decisions.”). “The party seeking release on bail must establish that special  
 7 circumstances exist by a preponderance of the evidence.” *Garcia v. Benov*, No. CV 08-  
 8 07719 MMM CWX, 2009 WL 6498194, at \*3 (C.D. Cal. Apr. 13, 2009).<sup>1</sup>  
 9 Beyond “special circumstances,” courts have grafted the Bail Reform Act’s concerns  
 10 about risks of nonappearance and danger to the community on to the “special  
 11 circumstances” doctrine. As further explained below, Mr. Rivera challenges the  
 12 consideration of any supposed risk of danger on due process grounds.

## 13 ARGUMENT

### 14 I. THE COURT CAN EXERCISE ITS SOUND DISCRETION TO 15 DETERMINE THAT THE PRECARIOUS HEALTH AND SAFETY OF 16 MR. RIVERA’S PARENTS IS A “SPECIAL CIRCUMSTANCE,” 17 ESPECIALLY COMBINED WITH THE OTHER CIRCUMSTANCES 18 OF THIS MATTER.

19 As reported by his older sister, Mr. Rivera is his parents’ caretaker and financial  
 20 lifeline. *See* Ex. A, Letter from P. Rivera (explaining, “all the responsibility of taking my  
 21 parents to their doctor appointments, grocery shopping, running errands, etc., fell onto  
 22 my brother,” and “without him, they will no longer be able to afford housing.”).  
 23 Without Mr. Rivera to care for them, they could end up living on the street or dead.  
 24 The Court can exercise its sound discretion to determine that such circumstances—the

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 26 <sup>1</sup> *See also In re Extradition of Santos*, 473 F. Supp. 2d 1030, 1036 n.4 (C.D. Cal.  
 27 2006) (“Santos’s request for release on bail will be evaluated using a preponderance of  
 28 the evidence standard.”); *Santos v. Thomas*, No. CV 11-06330 MMM, 2012 WL  
 12964319, at \*2 (C.D. Cal. June 29, 2012) (“The party seeking release must establish  
 that special circumstances exist by a preponderance of the evidence.”).

1 precarious health and safety of two elderly and vulnerable Los Angeles residents—are  
 2 “special,” especially when combined with the other circumstances of this case. *See*  
 3 *Matter of Requested Extradition of Kirby*, 106 F.3d 855, 864 (9th Cir. 1996)  
 4 (“Notwithstanding the weaknesses of the ‘special circumstances’ upon which the district  
 5 court relied, we hold that such ‘circumstances’ do exist.”); *Wroclawski*, 634 F. Supp. 2d  
 6 at 1007 (“Based on the evidence in the record and the Government’s concession that  
 7 Petitioner is not a flight risk, in conjunction with the evidence that Petitioner has been on  
 8 release for nearly a year without incident, the Court considers this to be one special  
 9 circumstance warranting release.”).

10 **Mr. Rivera’s Parents.** Candido Rivera, Mr. Rivera’s father, is a 65-years-old  
 11 retired welder who did not complete high school. He is also blind, diabetic, and mostly  
 12 limited to a wheelchair because of an accident in which he shattered his ankle. He has  
 13 also suffered myriad other health problems. Taking two examples, Mr. Rivera’s sister  
 14 recounts how Mr. Rivera saved their father’s life when he suffered kidney failure, and  
 15 how her father later had a heart surgery resulting in temporary hospice care:

16 When my dad’s kidney’s collapsed and the water retention was  
 17 asphyxiating my dad’s heart, my brother had to act fast and get  
 18 him to the hospital to save his life. My father also had a heart  
 19 surgery soon after because his arteries were completely blocked,  
 20 he was put in hospice for several months and was in dialysis until  
 21 recently.

22 Ex. A, Letter from P. Rivera. Adding to all of these difficulties, Candido is not fluent in  
 23 English, making it impossible for him to manage his finances or medical care, much less  
 24 provide his own transportation or other basic needs such as purchasing groceries.  
 25 He receives modest monthly retirement benefits of just under \$2,000 per month. It is  
 26 unrealistic to expect him to return to work to make up for the loss of his son’s income.  
 27 Candido is willing to act as a surety to ensure that Mr. Rivera can continue to assist him  
 28 with basic life activities.

1       Mr. Rivera's mother, Maria Rivera, is a 62-years-old lifelong housekeeper with  
2 almost no formal education. She cannot read, drive, or speak English. Like her husband,  
3 she is also diabetic. For these reasons, she is similarly unable to manage her own finances  
4 or medical care. Nor is she able to independently care for her husband. It is also  
5 unrealistic that she would be able to find employment to make up for the loss of her son's  
6 income, given that she has never worked, cannot drive, speak English, or read.

7       ***A Devoted Son.*** Given his parents' significant health issues, lack of education,  
8 and inability to speak English, Mr. Rivera and his sister had to step up to ensure their  
9 basic needs are met. But, as explained by Mr. Rivera's sister, this responsibility has  
10 fallen entirely on Mr. Rivera since she started her own family:

11       After I moved out to live with my husband, all the responsibility  
12       of taking my parents to their doctor appointments, grocery  
13       shopping, running errands, etc., fell onto my brother. He became  
14       the eyes for both of our parents because my father is blind and  
15       my mother is illiterate, any medical documents or forms that  
16       needed to be read or completed, my brother handled. . . . Bryant  
17       also provides financial support for our parents, without him, they  
18       will no longer be able to afford housing.

19       As parents age without a plan, they become like children, a  
20       burden that no son should have to carry on his shoulders, but  
21       Bryant did all that he could to take care of their needs and support  
22       them. I am thankful that Bryant has been taking care of our  
23       parents for years. I have a family of my own now to prioritize,  
24       including 2 children who are in elementary school. I don't know  
25       what I would do if Bryant is not around to care for our parents.

26       Ex. A, Letter from P. Rivera.

27       ***Other Circumstances.*** Finally, other circumstances in this matter support a  
28       finding of "special circumstances," including Mr. Rivera's overwhelmingly strong ties

1 to the community, the complete absence of any prior criminal history, and the trust that  
2 his sister has demonstrated by agreeing to act as a third party custodian and have  
3 Mr. Rivera live with her family despite the seriousness of the allegations against him.

4 **II. MR. RIVERA CANNOT BE DETAINED BASED ON CONCERNS FOR**  
5 **THE SAFETY OF THE COMMUNITY.**

6 Special circumstances aside, the Court should not detain Mr. Rivera based on  
7 concerns for the safety of the community. Doing so would violate his right to due process  
8 under the Fifth Amendment. And even if the Court considers danger, there is no evidence  
9 that Mr. Rivera poses an immediate danger to anyone in the Central District of California  
10 or the United States more broadly, as Mr. Rivera has peacefully resided in the Los  
11 Angeles area for three decades. To the extent the Court is concerned about the safety of  
12 sex workers in Tijuana, a combination of conditions can ensure their safety.

13 **A. The Court cannot detain Mr. Rivera based on safety concerns**  
14 **because doing so would violate his right to due process.**

15 “[T]he Due Process Clause contains a substantive component that bars certain  
16 arbitrary, wrongful government actions regardless of the fairness of the procedures used  
17 to implement them. Freedom from bodily restraint has always been at the core of the  
18 liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha*  
19 *v. Louisiana*, 504 U.S. 71, 80 (1992) (cleaned up). “At the least, due process requires that  
20 the nature and duration of commitment bear some reasonable relation to the purpose for  
21 which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also O’Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) (“Nor is it enough that  
22 Donaldson’s original confinement was founded upon a constitutionally adequate basis  
23 . . . it could not constitutionally continue after that basis no longer existed.”); *Jones v. United States*, 463 U.S. 354, 368 (1983) (holding that the nature and duration of  
25 confinement must bear a reasonable relation to the purpose of the confinement); *Foucha*,  
26 504 U.S. at 79 (same).

1       Illustrating the requisite connection between the purpose and duration of  
2 confinement, the Supreme Court in *Jackson v. Indiana* held that due process prohibits  
3 states from confining incompetent criminal defendants without considering whether they  
4 are capable of being rehabilitated to the point of competency, explaining:

5       We hold, consequently, that a person charged by a State with a  
6 criminal offense who is committed solely on account of his  
7 incapacity to proceed to trial cannot be held more than the  
8 reasonable period of time necessary to determine whether there  
9 is a substantial probability that he will attain that capacity in the  
10 foreseeable future. If it is determined that this is not the case, then  
11 the State must either institute the customary civil commitment  
12 proceeding that would be required to commit indefinitely any  
13 other citizen, or release the defendant.

14 406 U.S. at 738.

15       Similarly, detaining a person in extradition proceedings because of safety concerns  
16 is unmoored from the purpose of extradition. As the government correctly notes, the  
17 purpose of extradition is to ensure that the U.S. government fulfills its “obligation to  
18 make [a] surrender; an obligation which it might be impossible to fulfill if release on bail  
19 were permitted.” ECF No. 7, at 4-5, quoting *Wright*, 190 U. S. at 62; *see also* 18 U.S.C.  
20 § 3184 (not directing courts to consider safety of the community in determining  
21 extradition). This singular purpose distinguishes extradition proceedings from criminal  
22 proceedings—which are governed by statutes, like the Bail Reform Act and 18 U.S.C.  
23 § 3553, that direct courts to consider the safety of the community and the need to deter  
24 future criminal acts of a defendant. *See United States v. Salerno*, 481 U.S. 739, 747  
25 (1987) (upholding the constitutionality of the Bail Reform Act in part because,  
26 “The legislative history . . . indicates that Congress did not formulate the pretrial  
27 detention provisions as punishment . . . . Congress instead perceived pretrial detention as  
28

1 a potential solution to a pressing societal problem.”).<sup>2</sup> Given the singular purpose of  
 2 extradition proceedings, there is no relation—much less a “reasonable relation”—  
 3 between the need for the U.S. government to abide by its treaty obligations and a relator’s  
 4 supposed danger to the community. *Jackson*, 406 U.S. at 738.

5 **B. Mr. Rivera is not a danger to anyone in the Central District of  
 6 California or the United States more broadly.**

7 Even if the Court considers danger, it should not detain Mr. Rivera. According to  
 8 the American government, the Mexican government has had reason to associate a  
 9 U.S. citizen and California resident using the name “Bryant Rivera” with the death of the  
 10 alleged victim since January of 2022. *See* ECF No. 1, at 3-4.<sup>3</sup> Nonetheless, a Mexican  
 11 judge did not issue a warrant for Mr. Rivera’s arrest until November of 2022. *See id.*, at  
 12 2. And despite the seriousness of the unproved allegations against him, American law  
 13 enforcement did not arrest Mr. Rivera until June of 2023—approximately 18 months after  
 14 Mexican authorities were given the name “Bryant Rivera,” and 6 months after a Mexican  
 15 judge issued an arrest warrant. Whatever the cause of these delays, the mere fact that they  
 16 were permitted to occur betray any claim that Mr. Rivera poses an immediate danger to  
 17 anyone, especially in the Central District of California, where Mr. Rivera has peacefully  
 18 lived for thirty years.

19 Any claim of danger is further undermined and overwhelmingly refuted by  
 20 Mr. Rivera’s spotless criminal history both before and after the events alleged in the  
 21 complaint. Probation & Pretrial Services conducted a background check using records  
 22 maintained by the Federal Bureau of Investigation, the California Bureau of Criminal  
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 25 <sup>2</sup> The government correctly notes that such criminal statutes do not apply in  
 26 extradition proceedings. ECF No. 7, at 2 n.2.

26 <sup>3</sup> (claiming, “On or about January 28, 2022, the Victim’s mother provided a  
 27 statement to Mexican authorities and related the following facts: . . . The Victim’s  
 28 boyfriend was not able to find the Victim. However, he told the Victim’s mother that one  
 of the women in the bar said that she had seen the Victim with a male client . . . The  
 woman added that she knew the Victim’s client as “Bryant Rivera,” and that he was  
 a ‘gringo.’”).

Identification and Information, and the National Crime and Information Center. Despite this extensive search, they failed to find any record of any arrest, warrant, charge, or conviction for Mr. Rivera.

Beyond that, Mr. Rivera's sister, who has maintained a close relationship with Mr. Rivera throughout his life, is also willing to have Mr. Rivera live with her husband and two children at their home despite the seriousness of the allegations against him. Such trust is a strong indicator that he does not pose a danger to his current community.

C. To the extent there is a danger to sex workers in Tijuana, a combination of conditions can ensure their safety.

Given Mr. Rivera’s decades-long record of abiding by American law, any concerns about danger would arise solely from the allegation that he committed femicide of a sex worker in Tijuana. Indeed, the government’s argument on danger is solely based on the alleged events in Tijuana. ECF No. 7, at 10-11. And there is no evidence that Mr. Rivera has ever posed a danger to anyone outside of that context.<sup>4</sup> Yet, Mr. Rivera is currently in Los Angeles—approximately 135 miles away from Tijuana. And a combination of conditions can ensure that he does not return to Tijuana during these extradition proceedings. Mr. Rivera can be placed on home incarceration with location monitoring via ankle monitor. His sister, who is a stable and responsible mother of two, has additionally agreed to: (i) permit Mr. Rivera to live in her home with her husband and two children who are in elementary school, (ii) act as a third-party custodian, and (iii) act as a surety. Mr. Rivera’s sister will have a strong incentive to report any violations, as she has substantial financial obligations that would be endangered if she

<sup>4</sup> The report authored by Probation & Pretrial Services makes the unfounded claim that Mr. Rivera's supposedly "unknown mental health and substance use history" are a factor indicating danger to the community. This unsupported speculation is refuted by the facts detailed in the same report, namely that Mr. Rivera's father "informed [Probation & Pretrial Services] the defendant does not have a history of mental health or substance use issues." It is also refuted by Mr. Rivera's sister. *See Ex. A.* ("[H]e never acquired bad habits, he hated alcohol because of our dad's drinking problem . . .").

1 forfeited any money, including her ongoing financial support of her children, her  
2 mortgage, and a recent car loan.

3 **III. MR. RIVERA IS NOT A FLIGHT RISK.**

4 Finally, Mr. Rivera has none of the hallmarks of a person typically deemed to pose  
5 a risk of nonappearance. He is a U.S. citizen and lifelong resident of the Central District  
6 of California who has never failed to appear for court, much less been arrested for or  
7 even accused of prior crimes. He has had stable housing and employment for years.  
8 As discussed above and in his sister's letter, he has incredibly strong family ties and  
9 obligations in Los Angeles. His foreign travel is minimal; it does not appear that he has  
10 ever been to any country other than the two countries involved in the instant extradition  
11 proceedings. Beyond that, it is extremely unlikely that Mr. Rivera would be able to flee  
12 if he is (i) subject to electronic monitoring and (ii) required to live with his sister who  
13 will additionally act as a third party custodian. As noted above, Mr. Rivera's sister has  
14 strong incentives to ensure her brother's compliance and quickly report any  
15 noncompliance. And though the allegations against Mr. Rivera are serious, Mexican law  
16 is not as punitive as American law. To the contrary, according to the government, the  
17 punishment for femicide in Mexico is 35 to 60 years imprisonment—not the death  
18 penalty or even life imprisonment. ECF No. 7, at 10.

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## CONCLUSION

For the stated reasons, Mr. Rivera requests that he be granted bail subject to the following conditions: (i) he reside with his sister in Lynwood, California, (ii) his sister shall act as third-party custodian, (iii) location monitoring via ankle monitor, (iv) home incarceration with the exception that, with approval from Pretrial Services, Mr. Rivera may go to his parents' apartment in Downey, California, to perform caretaking responsibilities, (v) affidavits of surety by his father and sister, and (vi) any other condition deemed necessary by the court.

Respectfully submitted,

# CUAUHTEMOC ORTEGA

## Federal Public Defender

DATED: July 10, 2023

By */s/ J. Alejandro Barrientos*

J. ALEJANDRO BARRIENTOS  
Deputy Federal Public Defender  
Attorney for Bryant Rivera